FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM—1969

Office-Supreme Court, U.S.
FILED
APR 14 1970
JOHN F. DAVIS, CLERK

No. ~~670~~ 42

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY,

Petitioners,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR PETITIONERS

VINCENT J. APRUZZESE,
Counsel for Petitioners,
1180 Raymond Boulevard,
Newark, New Jersey, 07102.

Of Counsel:

FRANCIS A. MASTRO,
MERRITT T. VISCARDI,
APRUZZESE & MCDERMOTT.

TABLE OF CONTENTS

	PAGE
THE OPINIONS BELOW	1
JURISDICTION	2
STATUTE INVOLVED	2
QUESTIONS PRESENTED	2
STATEMENT OF THE CASE	3
INTRODUCTION AND SUMMARY	10
POINT I—The Court of Appeals erred in holding that an object of causing the disruption of an existing business relationship, even though something less than a total cancellation of the business connection is not a "cease doing business" object within the meaning of Section 8(b) (4) (B) of the Act	11
(a) The Legislative History	11
(b) The Judicial and Administrative Precedents	17
(c) Other Ramifications of the Decision	29
POINT II—The Court of Appeals erred in rejecting the finding of the Board that Respondent had a cease doing business object within the meaning of the Act	33
CONCLUSION	42
SUPPLEMENTAL APPENDIX:	
Statute Involved	1a

PAGE

Cases Cited

A. Duie Pyle, Inc. v. N.L.R.B., 383 F. 2d 773 (C. A. 3, 1967) 29, 30

Alpert v. Local 1066, Int'l Longshoremen's Assoc., 166 F. Supp. 22 (D. C. Mass. 1958) 15fn, 27

Bangor Building Trades Council, AFL-CIO (Davidson Construction Co., Inc., 123 NLRB 484 (1959), enf'd, 278 F. 2d 287 (C. A. 1, 1960) 40fn

Booth and Flinn Co., 120 NLRB No. 75 (1958) 37

Building and Construction Trades Council (Boston Gas Co.), 137 NLRB 1299 (1962), enfd., Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 12, 320 F. 2d 250 (C. A. 1, 1963) 27

Electrical Workers Union (New York Telephone Company, 140 NLRB 729 (1963) 22

Highway Truck Drivers and Helpers, Local 107, I.B.T. (E. A. Gallagher and Sons), 131 NLRB 925 (1961), enfd. 302 F. 2d 897 (C. A. D. C. 1962) 27, 31fn

International Brotherhood of Electrical Workers, AFL-CIO, et al. (Bendix Radio Division of the Bendix Corporation), 138 NLRB 993 (1962) 27

International Longshoremen's Association, AFL-CIO (Board of Harbor Commissioners, Wilmington, Delaware), 137 NLRB 1178 (1962), enfd. as mod., 331 F. 2d 712 (C. A. 3, 1964) 27, 39fn

Local 825, I.O.U.E. (American Dredging Co.), 168 NLRB No. 34 (1967), enf'd sub. nom. N.L.R.B. v. Weber, 382 F. 2d 387 (C. A. 3, 1967) 38

PAGE

I.U.O.E., Local 825 (Building Contractors Association of New Jersey), 118 NLRB 978 (1957) 37

I.U.O.E., Local 825 (Building Contractors Association of New Jersey), 145 NLRB 952 (1964), enf'd August 5, 1966, by consent decree in civil No. New Jersey), 145 NLRB 952 (1964) 5fn 37

I.U.O.E., Local 825 (Carleton Bros. Co.), 131 NLRB 452 (1961) 37

I.U.O.E., Local 825 (Fluro Electric Corp.), 128 NLRB 725 (1960) 37

I.U.O.E., Local 825 (R. G. Maupai Co.), 135 NLRB 578 (1962), enf'd 315 F. 2d 695 (C. A. 3, 1963) 37

Local 825, I.U.O.E. (Morin Erection Co.), 168 NLRB No. 1 (1967) 38

I.U.O.E., Local 825 (Nichols Electric Co.), 137 NL RB 1425, enf'd in part 376 F. 2d 213 (C. A. 3, 1964), adjudged in criminal contempt (C. A. 3) cert. den. 379 U. S. 934 .....37, 38

I.U.O.E., Local 825 (Peter Weber, President and Business Manager) and Utilities Line Construction Co., Inc., 159 NLRB 131 38

I.U.O.E., Local 825 (Schwerman Co. of Pa., Inc.), 139 NLRB 1426 (1962) 37

I.U.O.E., Local 825 (United Engineers and Constructors, Inc.), 138 NLRB 279 (1962), enf'd 322 F. 2d 478 (C. A. 3, 1963) 37

I.U.O.E., Local 825 (Warren George, Inc.) (1961) 37

Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO v. National Labor Relations Board, 366 U. S. 667 (1961) 31, 32

PAGE

Local 825, I.U.O.E. (Charles Simkin & Sons, Inc.), 120 NLRB No. 111 (1958) 37

Local 1066, International Longshoremens Association (Wiggins Terminals), 137 NLRB 45 (1962) 27

Longshoremen's Union (National Sugar Refining Co.), 142 NLRB 257 (1963) 23

National Labor Relations Board v. Local 825, etc. (No. 557), U. S. Sup. Ct. Oct. Term, 1969 2

National Woodwork Manufacturers Association v. N.L.R.B., 386 U. S. 612 (1967) 12fn, 29

New York Mailers Union No. 6, International Typographical Union (AFL-CIO) (The Publishers' Association of New York City), 136 NLRB 196 (1962), enf. 316 F. 2d 371 (C. A. D. C. 1963) ..27, 39, 39fn

N.L.R.B. v. Brotherhood of Carpenters (Wendnagel and Co.), 261 F. 2d 166 (C. A. 7, 1958) 27

N.L.R.B. v. Carpenters District Council of New Orleans and Vicinity, AFL-CIO (No. 25408), decided 407 F. 2d 804 (C. A. 5, 1969) 4, 15fn, 20, 36

N.L.R.B. v. Denver Building Trades Council, 341 U. S. 675 (1951) 11, 17, 18, 21, 40fn

N.L.R.B. v. International Longshoremen's Association, AFL-CIO (Murphy, Cooke & Co.), 331 F. 2d 712 (C. A. 3, 1964), enforcing as mod., 137 NLRB 1178 23

N.L.R.B. v. I.U.O.E., et al. (No. 17091) (unreported) 38fn

N.L.R.B. v. I.U.O.E., et al. (No. 17092) (unreported) 38fn

PAGE

N.L.R.B. v. International Union of Operating Engineers, Local 825, et al. (Building Contractors Association of New Jersey) (C.A. 3, Civil No. 15,928, unreported) 5fn 37

N.L.R.B. v. Local 3, Int'l Bro. of Electrical Workers, 325 F. 2d 561 (C. A. 2, 1963), enforcing, 140 NLRB 729 (1963) 15fn, 22

N.L.R.B. v. Local Union No. 164 IBEW, 388 F. 2d 105 (3rd Cir. 1968), denying enf., 158 NLRB 838 .... 24fn

N.L.R.B. v. Local 825, International Union of Operating Engineers (Nichols Electric Co.), 326 F. 2d 218 (C. A. 3, 1964) denying enf. 138 N.L.R.B. 540 ..... 12, 12fn, 27

N.L.R.B. v. Longshoremen's Union (National Sugar Refining Co.), 332 F. 2d 559 (1964) 23

N.L.R.B. v. Milk Wagon Drivers' Union, Local 753, 335 F. 2d 326 (C. A. 7, 1964) 15fn, 24

N.L.R.B. v. Plumbers Union of Nassau County, Local 457, U.A. (J. Bady d/b/a Bomat Plumbing and Heating), 299 F. 2d 494 (C. A. 2, 1962), enforcing, 131 NLRB 1243 26

Republic Aviation Corp. v. Labor Board, 324 U. S. 793 (1945) 32

Retail Fruit and Vegetable Clerks, Union Local 1017 v. N.L.R.B., 249 F. 2d 591 (C. A. 9, 1957) enforcing 116 N.L.R.B. 856 ..... 15fn, 26

Sailors Union of the Pacific, AFL (Moore Dry Dock Co.), 92 NLRB 547 (1950) 31, 31fn

Tennessee Coal and Iron Division of United States Steel, 127 NLRB 823 (1960), enf'd as mod., 294 F. 2d 256 (C. A. D. C. 1961) 40fn

PAGE

Texas Industries, 112 NLRB 923, n. 2 (1955), enf'd, 234 F. 2d 296 (C. A. 5, 1956) 40fn

Statutes Cited

Labor Management Relations Act (1947):

Sec. 1 ..... 14fn

Taft-Hartley Act 18, 29

28 U.S.C.:

Sec. 1254(1) 2

29 U.S.C. (National Labor Relations Act, as amended):

61 Stat. 29 ..... 14fn

136 ..... 2, 10, 14fn

73 Stat. 519 ..... 2, 10

Sec. 8(b) (4) 37

Sec. 8(b) (4) (A) 11, 29

Sec. 8(b) (4) (B) 3, 9-11, 22, 29, 37

Sec. 8(b) (4) (D) 37

Sec. 8(b) (4) (i) (ii) (B) 3, 9, 11, 41

Sec. 8(b) (4) (i) (ii) (D) 9

Sec. 8(e) 29

Sec. 141 ..... 14fn

Sec. 151 ..... 2, 10

Sec. 158(b) (4) (B) 11

PAGE

Other Authorities Cited

82 Corpus Juris Secundum, Statutes:

pp. 593-594, Sec. 323 ..... 13fn

93 Cong. Rec. 4199 II, 1947 Legislative History 1106 15fn

H.R. 100, S. 1371, S. 1365, 91st Congress..... 32fn

Senate Minority Report No. 105, Part II, 80th Congress, 1st Session, 20, I 1947 Legislative History 182 ..... 15fn

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 570

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY,

Petitioners,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR PETITIONERS, BURNS AND ROE, INC., AND WHITE CONSTRUCTION COMPANY

The Opinions Below

The opinion of the court of appeals (A. 346-355)* is reported at 410 F. 2d 5. The findings, conclusions and order

* References are to the Appendix jointly filed in Nos. 557 and 570, except where otherwise indicated.

of the National Labor Relations Board (A. 3-14) are reported at 162 NLRB 1617.

Jurisdiction

The judgment of the court of appeals was entered on May 29, 1969 (A. 356-358).

An order of the court of appeals denying the petition of the National Labor Relations Board for a rehearing was entered on June 12, 1969 (A. 359).

The petition for a writ of certiorari herein was filed on September 10, 1969. It was granted on February 4, 1970 and consolidated with *National Labor Relations Board* v. *Local 825,* etc. (No. 557) (A. 360-361).

The jurisdiction of this Court rests on 28 U.S.C. 1254 (1).

Statute Involved

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. sec. 151 *et seq.*) are set forth in the Supplemental Appendix, *infra,* page 1a.

Questions Presented

The court of appeals refused to enforce the secondary boycott portion of the Board's order and held that ". . . proof of coercive activity amounting to 'disruption of a business relationship' and aimed at causing a neutral employer to put pressure on a primary employer is insufficient, without more, to establish an effort to compel one employer to 'cease doing business' with the other . . ." within the meaning of the statute (A. 352).

The questions presented are:

1. Does proof of coercive activity against a neutral employer that causes a disruption of business between

the neutral employer and others establish a "cease doing business object" within the meaning of Section 8(b)(4)(B) of the Act or must it be shown that a union's object is to bring about a complete termination of the business relationship between the neutral employer and the primary employer?

2. Did the court of appeals err in failing to find as the Board did, that Respondent had a "cease doing business object" within the meaning of the Act?

Statement of the Case

This case arises from a decision of the court of appeals refusing to enforce that portion of a Board order finding that Respondent, Local 825, International Union of Operating Engineers, AFL-CIO, violated Section 8(b) (4) (i) and (ii) (B) of the Act (A. 346-355).

Burns and Roe, Inc. (hereinafter called "Burns") a general contractor, was engaged to construct a $68 million dollar nuclear power generating plant for Jersey Central Power and Light Company, a public utility, at Oyster Creek, Forked River, New Jersey (A. 5, 17, 44). White Construction (hereinafter called "White"), Chicago Bridge & Iron (hereinafter called "Chicago Bridge") and Poirier & McLane (hereinafter called "Poirier") were all subcontractors of Burns at the project (A. 5). It should be noted that Burns subcontracted all of its work and employed no direct labor (A. 5). White employed Ironworkers to do certain welding work at the site and Respondent demanded that operating engineers be employed instead (A. 5-7). White refused and there followed threats by Respondent against Burns and threats and actual work stoppages against Poirier and Chicago Bridge, all with an object, found the Board, of bringing about a cessation of business within the meaning of the Act, between Burns and White (A. 5, 7, 8-9, 10).

The court of appeals held that the object of Respondent was not to bring about a termination of the business relationship between Burns and White, but merely to coerce Burns so that Burns would put pressure upon White to succumb to Respondent's demands (A. 351). Such an object, said the Court, i.e., disruption and stoppages short of a complete and total termination of the business relationship, "however objectionable or deserving of condemnation it may be, falls short of the 'cease doing business' object proscribed by the Act." (A. 352).

In its decision, the court below cited for comparison the decision of the Fifth Circuit in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO,* (No. 25408) decided February 19, 1969 and reported at 407 F. 2d 804. In that case the Fifth Circuit applied the traditional N.L.R.B. interpretation that proscribed conduct which has as an object a disruption of the business relationship, even though something less than a total cancellation of the business connection, is a "cease doing business" object within the meaning of the Act. Thus, these two circuits are in direct conflict.

The essential facts as found by the N.L.R.B. and adopted by the Circuit Court in this case are as follows:

In September, 1964, Burns started construction of a $68 million dollar nuclear power generating plant at Oyster Creek, Forked River, New Jersey for the Jersey Central Power and Light Company (A. 5, 17, 44). As general contractor, Burns subcontracted all construction work to White, Chicago Bridge and Poirier (A. 5). Burns did not itself employ any construction workers (A. 5). All the operating engineers on the project were members of Local 825, which had collective bargaining contracts with Chicago

Bridge and Poirier but not with Burns or White[1] (A. 5, 17, 18). Burns, however, had a national agreement with the International Union of Operating Engineers, and both Burns and White were members of the Building Contractors Association of New Jersey which had contracts with Local 825 prior to 1963 and after the below noted enforcement decree (A. 5).

White came on the job in the beginning of September, 1965 and assigned the work of starting and stopping an electric welding machine to its ironworker employees who were to use the machine for welding structural steel (A. 5, 19). When the welding machine was installed at the job site during the week of September 20, Chris Gunderson, White's Construction Superintendent, was approached by Bill Bonatz, Job Steward for Local 825 and Hank Behrend, Lead Engineer for Poirier (both found by the N.L.R.B. to be agents of Local 825) (A. 5). They told Gunderson that he needed an operating engineer from Local 825 to push the buttons which started and stopped the welding machine (A. 5). Gunderson advised them that the work had been assigned to the Ironworkers (A. 5).

---

[1] Burns and White were members of the Building Contractors Association of New Jersey, and it should be noted that the absence of a contract between Local 825 and the Building Contractors Association of New Jersey at this time was attributable to the matters covered in *International Union of Operating Engineers, Local 825, et als. (Building Contractors Association of New Jersey)*, 145 NLRB 952, wherein the Board found a refusal to bargain violation to have been committed by Local 825 and which was not enforced by the Third Circuit until August 5, 1966. *(N.L.R.B.* v. *International Union of Operating Engineers, Local 825, et al. (Building Contractors Association of New Jersey)* (CA 3, 1966 Civil No. 15,928, unreported). (A. 5, 17, 18) Subsequent to that enforcement decree a contract did result which applied to all Association members.

On September 30, 1965 Gunderson was again approached by Bonatz and Behrend who told him that they were going to "knock the engineers off the crane," and handed him three copies of Local 825's agreement for White to sign (A. 5, 6). This proffered contract gave Local 825 jurisdiction over all power equipment including electric welding machines and forbade subcontracting by a party to the agreement unless the subcontractor agreed to perform the work subject to all the terms of the contract (A. 6). Shortly thereafter, at about 10:00 a.m. on September 30, the engineer and oiler on the crane stopped work. They did not return until 1:00 p.m. on October 1 (A. 6).

The Union also spoke to other contractors at the job site. On September 29, Bonatz and Behrend visited Giles Willis, resident Construction Manager for Burns and told him that the members of Local 825 employed by his subcontractors had voted to cease work after October 1 unless Burns signed a contract with the Union (A. 6). The next day, Bonatz and Behrend returned with Bobby Illario, Lead Engineer for Chicago Bridge, who was also found to be an agent of Local 825 by the N.L.R.B. (A. 5, 6). Illario gave Willis copies of the same contract that had been given to Gunderson and repeated that all the operating engineers would walk off the job unless Burns signed by the following morning (A. 6).

On the same day, September 30, 1965 R. T. Daricek, Superintendent for Chicago Bridge, asked Bonatz if the rumors that there would be a work stoppage the following day were true. Bonatz replied that no engineer would work for anyone if Burns did not sign a contract with Local 825 (A. 20). When Daricek protested that Chicago Bridge had a signed contract with Local 825 and that it had no dispute with the Union, Bonatz said that all the contractors were required to sign (A. 20).

The following morning, October 1, 1965 the three Union representatives again met Willis and asked if Burns had signed the contract (A. 6). When Willis replied in the negative, they proceeded to the parking lot and engaged in conversations with the engineers who were gathered there. The engineers employed by White, Chicago Bridge and Poirier (approximately 35) then left the area and did not report for work until about 1:00 P.M. that day (A. 6, 22).

On October 6, Bonatz and Illario told Willis that unless an operating engineer was assigned to the electric welding machine, no engineers would work the following day (A. 8, 21-22). Illario who did the talking, also brought up the failure of Burns and White to sign a contract with Local 825 (A. 22). Willis informed the Union representative that Burns had a national agreement with the Operating Engineers International Union and was not required to sign local contracts, and also told them that any change in the assignment to the Ironworkers would have to be made by the Joint Board for the Settlement of Jurisdictional Disputes. The same day, Burns formally submitted the work assignment dispute to the Joint Board for the Settlement of Jurisdictional Disputes (A. 7, 22, 337).

Poirier's General Superintendent, Telghman Suffrecal, was also warned by Behrend on October 6 that his 20 engineer employees might not work the following day (A. 8, 22). In response to questioning, Bonatz told Daricek of Chicago Bridge that the engineers would not operate its machines. The operating engineers employed by White, Chicago Bridge and Poirier struck and did not report for work from October 7 until October 12th (A. 8, 21-22).

Because of this October 7th to October 12th strike, Chicago Bridge could not use their 80 employees (A. 74), White couldn't use approximately 9 (A. 60) and Poirier, within two days after the stoppage began, could not use

its 200 to 250 men on the project (A. 81). Thus, about 300 men were deprived of work, their employers of their services, and the project effectively closed down, all because of Respondent's activities.

When the engineers failed to show up on October 7, Gunderson called the main office of Local 825 and asked for replacements for the following day. Two men appeared but they insisted on checking with the operating engineers on the job before going to work. They left and did not return (A. 21).

On October 8, when the strike was in progress Bonatz told Langlinais, Project Manager for Chicago Bridge, that the work stoppage was a direct result of the welding machine assignment and the failure of Burns and White to sign contracts with Local 825 (A. 8, 22). When Langlinais protested that Chicago Bridge had a contract with the Union and that the work stoppage was costing it a lot of money, Bonatz suggested that Chicago Bridge "do what Poirer and McLane was doing, bill Burns" for the loss (A. 71).

Three days later, Behrend told Suffrecal that the engineers might be back the following day, October 12 (A. 22). Upon being questioned by Suffrecal, Behrend admitted that the Union's dispute was with Burns and White and there was no dispute with Poirier (A. 22). Poirier's and Chicago Bridge's engineers returned to work on October 12th (A. 8, 22).

Upon the foregoing facts and the entire record, the Board found that a preponderance of evidence established that Local 825, with an object to force or require White to assign the disputed work to engineers represented by the Respondent, induced or encouraged employees employed by White, Chicago Bridge and Poirier to engage

in a work stoppage on October 1, 1965 and threatened, restrained or coerced Burns and other employers, all in violation of Section 8(b) (4) (i) and (ii) (D) of the Act (A. 7). The Board also found that Local 825 was responsible for the strikes on October 1 and October 7 which violated Section 8(b) (4) (i) and (ii) (B) of the Act (A. 7).

In reaching this conclusion, the Board noted that Respondent's strikes and strike threats were in furtherance of the Respondent's primary dispute with White who refused to reassign the welding machine work to engineers represented by Respondent (A. 8). "It is equally clear," the Board stated, "that the Respondent sought to achieve the assignment of this disputed work by applying economic pressure on neutrals to the dispute—Burns, the general contractor, and subcontractors Chicago Bridge and Poirier —with an object of causing a disruption of the business relationship among the various employers at the jobsite." (A. 8). This, the Board concluded, constituted a cease doing business object within the meaning of Section 8(b) (4) (B) of the Act, "although something less than a total cancellation of the business relationship." (A. 8, 9). It found therefore that within the meaning of the Statute, an object of Respondent's conduct was "to force Burns to cease doing business with White and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White" (A. 9).

As stated above, the court of appeals did not take issue with any of these facts as found by the N.L.R.B. (A. 351) but rather held that in order to establish a violation of Section 8(b) (4) (B) of the Act, nothing short of a complete cancellation of the business relationship among the neutral and primary employers involved must be proved as the union's object. Accordingly, the court refused to enforce that portion of the Board's Order finding a violation of Section 8(b) (4) (i) and (ii) (B) of the Act (A. 352, 355).

Introduction and Summary

It is the position of the petitioners that the opinion below erroneously interprets the "cease doing business" language of section 8(b)(4)(B) of the National Labor Relations Act, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.* To require proof that the Union's object is to bring about a complete termination of the business relationship between the neutral and primary employers, is contrary to well established precedent. Moreover, we further contend that under such test the Third Circuit would have us apply an evidentiary standard which would virtually require an admission by a union of such an unlawful object in order to establish a violation of the Act, as opposed to the reasonable inferences that can be drawn from its course of conduct.

The Board in the exercise of its expertise in interpreting and applying this provision of the Act over a period of 22 years has never taken such a view. Rather, it has held with the approbation of virtually every Circuit, *including the Third Circuit,* that coercion of a neutral employer by a union, even though for an object which is something less than a total cancellation of a business relationship constitutes a "cease doing business" object within the meaning of the Act.

This brief shall demonstrate that the long standing interpretation of the Board is consistent with the legislative purpose of the Act and should be upheld.

As will be shown, the latent ramifications in the circuit's decision are far reaching, particularly in the construction industry. Petitioner submits that if permitted to stand, this decision will wipe out an overwhelming body of sound precedent, reshape labor relations as heretofore understood and have a substantial adverse impact upon interstate commerce.

Accordingly, we respectfully urge this Court to reverse the decision of the court of appeals with regard to the Section 8(b)(4)(i) and (ii)(B) portions of the order of the National Labor Relations Board and direct that the order be enforced in its entirety.

POINT I

The Court of Appeals erred in holding that an object of causing the disruption of an existing business relationship, even though something less than a total cancellation of the business connection is not a "cease doing business" object within the meaning of Section 8(b) (4) (B) of the Act.

(a) The Legislative History

The fundamental question presented by this writ is whether the secondary boycott provision of the National Labor Relations Act is to continue to be interpreted in such a manner as to achieve its legislative purpose or is to be so narrowly construed as to make the effectuation of that purpose virtually impossible.

The decision below sets forth a constricted interpretation of the words "cease doing business" and, as will be discussed later, superimposes an evidentiary standard which, in the absence of an admission by a Respondent union, is virtually impossible to satisfy.

As this Court recognized in *N.L.R.B.* v. *Denver Building Trades Council*, 341 U. S. 675, 692 (1951), the object of Congress was much broader in enacting Section 8(b)(4)(B), [formerly Section 8(b)(4)(A)] of the National Labor Relations Act as amended, 29 U.S.C. Sec. 158 (b)(4)(B). As stated in that case:

> "In the views of the Board as applied to this case, we find conformity with the dual Congressional ob-

jectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressure in controversies not their own." [2]

Contrary to that view, the decision of the Third Circuit would permit pressures upon unoffending employers in controversies not their own—provided these pressures did not have as their objective a total cancellation of the business relationship between the unoffending employer and the primary employer. Thus, the court of appeals alluding to its earlier decision in *N.L.R.B.* v. *Local 825, International Union of Operating Engineers, (Nichols Electric Co.)* (CA 3, 1964, 326 F. 2d 218, stated:

"Accordingly, following our earlier decision,[3] we hold that proof of coercive activity amounting to

---

[2] See also *National Woodwork Manufacturers Association* v. *N.L.R.B.*, 386 U.S. 612, 623-626 (1967).

[3] We do not view the court's decision in *N.L.R.B.* v. *Local 825, etc., (Nichols Electric Co.) supra,* as precedent for its holding herein. In that case the court did not reject the Board's "disruption" principle under the Act but rather held that when the engineers on the project employed by the various employers stopped work to surround Nichols' welding machine, that stoppage was merely an incidental consequence of their demand that Nichols assign the work to engineers and not an attempt to compel their employers to cease doing business with Nichols. Without commenting on the validity of that conclusion, we submit that in the instant case the stoppages were not incidental to any action against White. Rather, as the opinion states, ". . . the record amply justifies the conclusion that these contractors [Burns, Chicago Bridge and Poirier] were subjected to coercion in the form of threats or walkouts or both." Moreover, we contend the record here also amply justifies the Board's conclusion that the coercion found was for an unlawful object.

'disruption of a business relationship' and aimed at causing a neutral employer to put pressure on the primary employer is insufficient, without more, to establish an effort to compel the one employer to 'cease doing business' with the other. The language of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the 'cease doing business' language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be. But cf. N.L.R.B. v. Carpenters District Council of New Orleans and Vicinity, AFL-CIO, 5th Cir., No. 25408, decided February 19, 1969. We think it is for Congress to broaden the language of section 8 (b)(4)(B) if it desires to cover such situations as this."

Sound principles of statutory construction require that to give effect to the intent of the legislature, a court must look to the object to be accomplished and the evils or mischief sought to be remedied.[4]

Congress made its "Declaration of Policy" in the very first section of the Act. That section states that the purpose of the Act is to promote the full flow of commerce by the avoidance of industrial strife which interferes with that flow. Such strife, it goes on, can be avoided or *substantially minimized* if employers, employees and labor organizations each recognize the respective rights of each

---

[4] *Corpus Juris Secundum*, Volume 82, Statutes, Sec. 323 (p. 593-594).

other under law.[5] Tested by that standard, the opinion of the court of appeals is most wanting.

An examination of the legislative history of the 1947 amendments to the Act compels the conclusion that Congress was not only concerned with outlawing "classic secondary boycotts" but rather intended to eradicate the evil of all secondary boycotts that enmeshed neutral employers in disputes not their own.

This purpose is no better expressed than in the language of Senator Taft, who during the Senate debates

---

[5] Section 1 reads as follows:

> SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."
>
> (b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any rights in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.
>
> It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce. (61 Stat. 136; 29 U.S.C. 141)

stated, "It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our Committee heard evidence for weeks and never succeeded in having anyone tell us any differences between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice."[6]

The broad purposes of the statute also were recognized in the Senate Minority report where the complaint was made that the statute "ignores valid distinctions between justified and unjustified boycotts based on the objective of the union in carrying on such a boycott . . . It indiscriminately bans all such boycotts whether justified or not."[7]

This, then, was the temper of Congress and the atmosphere in which this legislation was enacted. Congress clearly did not share the narrow view that the Third Circuit would now interpolate into the Statute. Rather, it saw an evil and sought to correct it.

Nowhere in the legislative history is there any indication that Congress sought to prevent only coercive activity which had as its objective a complete termination of a business relationship. Certainly, the individual members of Congress realized as have the Board and the courts that in the vast majority of cases a Union's purpose is to disrupt a business relationship in order to compel the primary employer to accede to its demands.[8] Only failing

---

[6] 93 Cong. Rec. 4199 II, 1947 Legislative History 1106.

[7] Senate Minority Report No. 105, Part II, 80th Congress, 1st Session, 20, I 1947 Legislative History 182.

[8] See, *e.g.*, *N.L.R.B.* v. *Carpenters District Council*, 407 F. 2d 804, 806 (C.A. 5, 1969); *N.L.R.B.* v. *Milk Wagon Drivers' Union, Local 753*, 335 F. 2d 326, 328 (C.A. 7, 1964); *N.L.R.B.* v. *Local 3, Int'l Bro. of Electrical Workers*, 325 F. 2d 561 (C.A. 2, 1963), enf. 140 NLRB 729 (1963); *Retail Friut and Vegetable Clerks Union Local 1017* v. *N.L.R.B.*, 249 F. 2d 591, 595 (C.A. 9, 1957). See also *Alpert* v. *Local 1066, Int'l Longshoremen's Assoc.*, 166 F. Supp. 22, 25 (D.C. Mass. 1958).

that most desired end is the union's purpose served by the complete removal of the primary employer. Thus, if the opinion below is correct, are not most secondary boycotts which have been condemned in legions of cases and which conduct is certain to re-occur, free from restraint?

Let us consider the possible alternatives when work stoppages as those in the instant case occur in the construction industry. There are three:

1. The union will not work and despite this neither the neutral nor primary employer will change its position. Obviously, if everyone remains adamant, the project will never be finished. It is submitted that this is extremely unlikely and the most remote of the three alternate possibilities.

2. The second alternative is that the project will resume but the primary employer upon whom the union is trying to foist the desired condition and who refuses to comply will be removed from the project.

This latter possibility, removal of the employer with whom the union has a dispute is the second least likely alternative. On construction projects it is not a simple matter to terminate a contract and replace the employer with a new contractor. There are many factors to be considered prior to awarding a job. For example, bidding requirements must be made known and appropriate time allowed for same particularly in the case of public projects. The supply of equipment, material and personnel all must be adequately programmed, design problems and shop drawings may very well be involved, all of the foregoing requiring a substantial investment of time, effort and money.

3. The third alternative is that the pressures exerted by the union will bear fruit and force a change of conditions by the primary employer which conforms to the de-

sires of the union. Experience demonstrates that this is the most likely alternative under the circumstances.

Thus, it is submitted that when Congress addressed itself to removing impediments to the free flow of commerce it dealt with the mainstream. It did not restrict itself and devise language to deal only with very remote possibilities. Within the framework of this congressional purpose all of the legal precedent of the Board and the courts can easily be understood. To follow the interpretation now espoused by the court below would not only undermine and completely undo this legislative design but so enlarge the battlefield as to engender greater industrial strife than has existed since the inception of Taft-Hartley.

(b) The Judicial and Administrative Precedents

That a union's conduct might have various objectives was recognized by this Court early in the history of the Act in *N.L.R.B.* v. *Denver Building Trades Council, supra.* Considering the factual situation there present, this Court stated (at pp. 687-688):

> "The respondent labor organizations contend that they engaged in a primary dispute with Doose & Lintner alone, and that they sought simply to force Doose & Lintner to make the project an all-union job. If there had been no contract between Doose & Lintner and Gould & Preisner there might be substance in their contention that the dispute involved no boycott. If, for example, Doose & Lintner had been doing all the electrical work on this project through its own nonunion employees, it could have replaced them with union men and thus disposed of the dispute. However, the existence of the Gould & Preisner subcontract presented a materially different situation. The nonunion em-

ployees were employees of Gould & Preisner. The only way that respondents could attain their purpose was to force Gould & Preisner itself off the job. This, in turn, could be done only through Doose & Lintner's termination of Gould & Preisner's subcontract. The result is that the Council's strike, in order to attain its ultimate purpose, must have included *among its objects* that of forcing Doose & Lintner to terminate that subcontract. On that point the Board adopted the following finding: (Emphasis supplied)

> "'That *an* object, if not the only object of what transpired with respect to * * * Doose & Lintner was to force or require them to cease doing business with Gould & Preisner seems scarcely open to question, in view of all of the facts. And it is clear at least as to Doose & Lintner, that that purpose was achieved.' (Emphasis supplied) 82 NLRB at 1212."

It is that purpose, namely, to bring about a total or less than a total cessation of business, to destroy, disrupt or interrupt a business relationship whether as an immediate, ultimate, conditional or alternative object, express or inferred, that Congress condemned through the enactment of the Taft-Hartley Act.

Applying this criteria to the instant case, the error in the opinion below is clear. The court of appeals in its preoccupation with the idea that Respondent did not seek "to compel Burns to stop using the services of White or to terminate its contract with White " (A. 351) was concerned only with an *ultimate object.* It misses the point that there are equally unlawful objects though less than the ultimate object. Thus, when Respondent, Local 825 ordered its men off the job its *immediate object* had

to be to cause a cessation of business between Burns and White—even if only a temporary one, *i.e.* until White complied. Per force it was successful. The object was achieved. Business between White and Burns and the subcontractors did cease for the duration of the stoppages —in the last instance for 5 days when the project was brought to a complete halt. What more of a cessation is required under the Act? Must it be permanent? Of course not. No court has ever suggested that, until the Third Circuit in this case.

Let us assume for a moment, as does the Court below, that the Union's object was not to sever the relationship between Burns and White but merely to change it.[9] Realistically that could not have been its only object. Must it not necessarily be inferred that an alternate or, if you will, an ultimate object of the union was to force White off the job if he would not comply and have him replaced with someone who would? Is it not clear then that even the total rupture and cancellation of the relationship which the court of appeals deems essential to a violation was *an object* of the Union albeit not the most desired object? Just as a kidnapper's desired object is not to kill his captive, but rather to collect the ransom, it would be foolish to assume that he will not kill if the ransom is not forthcoming.

Viewed from every conceivable aspect, even those indulged by the Third Circuit, it must be found that *an* object was to cause Burns to "cease doing business" with White.

---

[9] As we shall demonstrate *infra*, the Board and other courts have long held that such an object is in and of itself, proscribed by the Act.

On February 19, 1969, the Fifth Circuit issued its opinion in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity*, 407 F. 2d 804, which the Third Circuit noted as being in direct conflict with its decision in this case. In the Fifth Circuit opinion (at p. 806), that court considering the same issue now before this Court stated:

> ". . . this case presents a classic example of secondary coercion: The union brought a neutral employer into its conflict with a primary employer by inducing employees of the neutral to strike and by appealing directly to the neutral's officers. One of the Union's defenses is that secondary pressure is not prohibited by the statute unless an object thereof is to force the neutral to cease doing business with the primary employer. The union argues that it never suggested to Southern that it should cease doing business with Delta and had no desire for this to happen; it simply wanted Southern to influence Delta to rehire carpenters. Concededly, the subcontracting agreement between Southern and Delta did not require Delta to use carpenters, but Respondent nevertheless argues that it was merely pressuring Southern to use its influence with Delta and that it would not have benefited in the least from a severance of relations between the two companies. While the statute [8(b)(4)(B] by its literal terms does require that an object of illegal secondary pressure be to force a neutral to cease doing business with a primary employer, the Board has said, and we agree, that the objective of causing a serious disruption of an existing business relationship, even though something less than a total cancellation of the business connection is within the intendment of the statute. Electrical Workers Union, Local 3, 1963, 140 NLRB 729 enf'd,

> 2 Cir. 1963, 325 F. 2d 561, Longshoremen's Union, Local 1066, 1962, 137 NLRB 45; *International Typographical Union,* 1962, 136 NLRB 196, enf'd, D. C. Cir. 1963, 316 F. 2d 371. In this case, the union's objective was to force Southern to add a condition to its existing subcontracting agreement with Delta, namely, that Delta use only carpenters. Stated another way, the union's objective was to force Southern to cease doing business with Delta under the existing contractual arrangement, which did not require Delta to use carpenters on the work. Secondary coercion to force a neutral to add a condition of this kind to its existing contractual arrangement with the primary employer is an illegal objective within the meaning of the statute. The necessary elements for a violation of 8(b)(4)(i) and (ii)(B) were established."

As the above quoted language of the Fifth Circuit inferentially recognizes, in many, if not most secondary boycott situations, the offending union's preferred object is not to force a total severance of business relations, but merely to so alter the conditions under which the business relationship was first entered into that the Union's demands are met. Perforce the Congressional objective of shielding unoffending employers from pressures in controversies not their own, as recognized by this Court in *N.L.R.B.* v. *Denver Building Trades Council, supra,* cannot be achieved under the Third Circuit's construction of the statute.

The opinion of the Fifth Circuit on this issue, petitioners' submit, is consistent with the overwhelming body of administrative and judicial precedent. The Board, the agency charged by Congress with a mandate to interpret and enforce the provisions of the Act, and whose exper-

tise in such interpretation has been recognized by this and other Federal courts since the enactment of the Act, has never given the language of Section 8(b)(4)(B) the narrow interpretation advanced by the Third Circuit. In the view of the Board, the Act does not require that the union have as its object a total rupture of the business relationship as held by the Court below. Rather, it has long held that coercive activity taken against an employer which has as *an object* a disruption or serious curtailment of the business relationship between that employer and another is a violation.

For example, in *Electrical Workers Union (New York Telephone Company),* 140 NLRB 729, 730 (1963), the Board stated:

> "Even assuming *arguendo* that respondent did not consciously contemplate imposition of this sanction, it is nonetheless clear that respondent sought by its threat to require that the company superimpose upon its existing agreement with Delee an added condition of performance that the work had to be done by Respondent's members. Acceptance of this condition by Delee would require the company to cease doing business with Delee on the basis of their original arrangement. The objective of causing such a disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is a 'cease doing business' object within the meaning of section 8(b)(4)(B) of the Act."

The Board's finding in that case was sustained by the court of appeals for the Second Circuit, in *N.L.R.B.* v. *Electrical Workers, I.B.E.W.,* (New York Telephone Co.) 325 F. 2d 561 (1963).

In *Longshoremen's Union (National Sugar Refining Co.)*, 142 NLRB 257, 261, the Board reached the same conclusion, making specific reference to its disruption principles and its decision was subsequently *enforced by the Third Circuit.* (*N.L.R.B.* v. *Longshoremen's Union* (National Sugar Refining Co.) 332 F. 2d 559 (1964)).

The specific reference referred to in the Board's opinion reads as follows:

> "'The Board has held that a disruption of an existing business relationship, even though something less than a total cancellation of the relationship, is for a 'cease doing business' object within the meaning of Section 8(b)(4)(B) of the Act. Accordingly, we conclude that Respondents' inducement of Jarka's employees to engage in a work stoppage and threats to Jarka's officials, with an object of forcing Jarka to cease doing business with National, was violative of Section 8(b)(4)(i) and (ii)(B) of the Act.'"

Earlier that year, 1964, the *Third Circuit* again expressed its agreement with the long standing view of the Board that the disruption of a business relationship is a "cease doing business" object. *N.L.R.B.* v. *International Longshoremen's Association, AFL-CIO (Murphy, Cooke & Co.),* (CA 3, 1964) 331 F. 2d 712 (enforcing as mod. 137 NLRB 1178). In that case the union induced the employees of Murphy, Cooke & Co., a stevedoring concern to refuse to remove a cargo of frozen meat from a vessel unless employees of Murphy or members of the I.L.A. were assigned the work of transporting the meat shipside to the freezer of the consignee, Transit Freeze, work which the Harbor Commission had assigned to the Teamsters. There the Third Circuit, upon facts not dissimilar from the instant case, stated:

"The Board found that an object of respondents' conduct in inducing the strike was to effect a disruption of the business relations of all persons engaged in the transportation of meat to Transit Freeze until employees represented by ILA were employed to do the disputed work.

"It cannot be gainsaid that the Act does not prohibit all strikes. Sand Door case, (Carpenters Union v. NLRB) 357 U.S. 93, 98-99, (1958). It outlaws only those strikes whose objects are proscribed by the Act. Clearly one of the objects here, if not the only one, was to require someone to hire employees represented by ILA to do the coopering and the transporting of the meat to the door of Transit Freeze. If Murphy was without power, under the circumstances, to assign that work or without authority to perform it, then respondents' actions were proscribed by Sec. 8(b)(4)(B)."[10]

In another most significant case, *N.L.R.B.* v. *Milk Wagon Drivers Union (Pure Milk Association)*, 335 F. 2d 326, 328, (CA 7, 1964), the Seventh Circuit considered whether a Union violated the secondary boycott provisions of the Act by forcing a dairy company to disrupt an existing business relationship with a milk association because the association had engaged a hauling contractor, whose drivers did not belong to the union, to haul milk to the dairy company's plant. It should be noted that the union's contention in that case was that it had not

---

[10] Cf. *N.L.R.B.* v. *Local Union No. 164 IBEW*, 388 F. 2d 105 (3rd Cir. 1968) denying enf. of 158 NLRB 838 on the ground that the struck employer's lack of control over disputed work was insufficient to establish a secondary object.

asked the employer to cease doing business with anyone. Rather, it was merely insisting that the Company have its milk transported by members of their local, whether employed by one independent contractor or the other, or by the milk company itself. Considering these facts, the Seventh Circuit stated:

> "We think the Board was justified in deciding that the Union's conduct following their demands under their 'broadened interpretation' of Article 44 constituted unfair labor practices; and that the Union threatened to, and did, strike, because Wanzer could not, or would not continue to have the eight displaced Union men drive the tank-trucks hauling the milk. The Board could also reasonably infer that to accede to the Union demands would be forcing Wanzer to disrupt, or cease, a business relationship with PMA; that the Union knew or should have known that this would be a necessary result of the demands; that accordingly the Union's conduct was unlawful under Sec. 8(b)(4)(i) and (ii)(B); and that in striking to enforce Article 44, as interpreted by it, the Union was forcing Wanzer to condition whatever means were to be used to transport the milk on employment of Local 753 members, an unfair labor practice under Sec. 8(b)(4)(i) and (ii)(A). District No. 9, Int'l Ass'n of Machinists v. N.L.R.B., 315 F. 2d 33 (D.C. Cir. 1962). We are unable to say these inferences are clearly erroneous.
>
> "Neither can we say that, on those findings, the Board could not reasonably conclude that one of the objects of the Union's conduct was to force a disruption of the business relationship among Wan-

> zer, PMA and Quality. NLRB v. Denver Bldg. & Constr. Council, 341 U.S. 675, 688 (1951). *Less than a total cessation of an existing business relationship is within the meaning of 'cease doing business' in Sec. 8(b) (4) (B).* Local 3, Int'l Bhd. of Elec. Workers, 140 NLRB 729, 730 (1963), enforced 325 F. 2d 561 (2d Cir. 1963). (Emphasis supplied)
>
> "The inference is warranted that the Union, virtually, exerted pressure on Wanzer to break its contract with PMA that the milk be delivered f.o.b. Chicago unless Quality's drivers were members of Local 753. It follows that we must disagree with the Union's contention that it had not committed an unfair labor practice because it was not asking Wanzer to cease doing business with anybody, not asking Wanzer to buy milk from anybody but PMA at any time, but only asking Wanzer to live up to its agreement."

Many other decisions of the Board and the circuit courts are to the same effect. For example, in *Retail Clerks Union* v. *N.L.R.B.* (Retail Fruit Dealers Association), 249 F. 2d 591 (C.A. 9 1957), the Ninth Circuit, enforcing the Board's order at 116 NLRB 856, found that an object of the Union's activity was to involve neutrals and their employees in their primary dispute with another employer and to "disrupt business relations between neutral employers and the primary employer." Such object, the Court found, was an unfair labor practice within the meaning of the secondary boycott provisions of the Act. In *N.L.R.B.* v. *Plumbers Union of Nassau County, Local 457, U.A.* (J. Bady d/b/a Bomat Plumbing and Heating) 299 F. 2d 494 (C.A. 2 1962), the Second Circuit enforcing 131 NLRB 1243, found a violation in the conduct of a Union intended

to induce the employees of neutral employers to cease work for the "forbidden purpose" of forcing the general contractor to terminate his contract with the offending subcontractor unless he would contract with the Union. Here again, the Union did not have one and only one object, namely a termination of the business relationship. A successful disruption would have equally served its purpose. See also *International Brotherhood of Electrical Workers, AFL-CIO, et als.* (Bendix Radio Division of the Bendix Corporation), 138 NLRB 993 (1962); *Local Union 825, International Union of Operating Engineers,* (Nichols Electric Company), 138 NLRB 540 (1962), enf. den. 326 F. 2d 218 (C.A. 3, 1964); *Local 1066, International Longshoremens' Association* (Wiggins *Terminals*), 137 *NLRB* 45 (1962); *New York Mailers Union No. 6, International Typographical Union (AFL-CIO)* (The Publishers' Association of New York City), 136 NLRB 196 (1962), enf. 316 F. 2d 371 (C.A. DC, 1963); *Highway Truck Drivers and Helpers, Local 107, I.B.T.,* (E. A. Gallagher and Sons), 131 NLRB 925 (1961), enfd. 302 F. 2d 897 (C.A. DC, 1962); *International Longshoremen's Association, AFL-CIO* (Board of Harbor Commissioners, Wilmington, Delaware), 137 NLRB 1178 (1962), enfd. as mod. 331 F. 2d 712 (C.A. 3 1964); *Building and Construction Trades Council* (Boston Gas Co.), 137 NLRB 1299 (1962), enfd, in *Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 12,* 320 F. 2d 250 (C.A. 1, 1963); cf. *N.L.R.B.* v. *Brotherhood of Carpenters,* (Wendnagel and Co.) 261 F. 2d 166, (C.A. 7, 1958).

In *Alpert, etc.* v. *Local 1066, International Longshoremen's Association, Independent, et al,* 166 F. Supp. 22, 25 D.C. Mass. 1958), the district court considered a request by the Regional Director of the N.L.R.B. for a temporary injunction restraining a union which had a dispute with the

lessee of a pier over the lessee's use of the second floor of the pier for storage. The evidence revealed the inducement of employees of a shipping agent to engage in a strike in order to compel the lessee to change its storage policy. Commenting upon that factual situation the Court puts its finger upon the essence of the controversy now before this Court for determination. There the district court stated:

> "In the ordinary secondary boycott situation the persons in controversy with A, in order to put pressure on A, seek to induce B, against his will rather than by acceptable persuasion, to cease doing business with A. In the case at bar respondents' object was not the cessation of all business, but only of certain business. That does not seem a material distinction. Secondly, it might be argued that respondents were not seeking to stop business at all—that their concern was simply with how it was conducted. However, the means that they adopted was to effect an interruption of certain business relations until their demands were met. Nor do I think it an answer to say that Terminal could have put an end to the severance, at least until the third floor became filled, by acceding to respondents' demands. In most secondary boycotts the principal party with whom the union is in controversy can always end it by acceding to the demands. The present case is worse, because once the third floor became full Terminal would not even have that power."

So it is in the instant case. Surely Chicago Bridge and Poirier had no control over the work assignment by White which the Respondent Union sought to be changed. In fact, even Burns, the general contractor, had no control

over that assignment. What then was the choice with which Burns was confronted? It could continue to suffer the shutdown to its own financial detriment and that of all contractors involved, or ultimately, because of White's resistance to the Union's unlawful demands, terminate its contract with White and remove it from the project. Thus, the matter would have gone full-circle and *an* object of the Union, whether its preferred object or not, would have been achieved.

(c) Other Ramifications of the Decision

The decision of the Third Circuit in this case would also have an impact on Section 8(e) of the Act which prohibits so-called "hot cargo" clauses and uses the same "cease doing business" language as used in Section 8(b)(4)(B) of the Act. In *National Woodwork Manufacturers Association* v. *N.L.R.B.*, 386 U. S. 612, this Court stated that Sections 8(b)(4)(A), 8(b)(4)(B) and 8(e) must be construed in harmony as prohibiting various union methods of implementing the type of boycotts that Congress sought to prohibit in the Taft-Hartley Act. Clearly, such harmony does not exist in the decisions of the Third Circuit. For example, in *A. Duie Pyle, Inc.* v. *N.L.R.B.* 383 F. 2d 773, 775 (C.A. 3 1967), the Third Circuit reversed a finding by the N.L.R.B. that subcontracting provisions of a collective bargaining agreement between certain motor carriers and the Union, to the extent that they require the subcontractees to become employees of the carriers and thereby to join the union, did not violate the "hot cargo" provisions of Section 8(e). In finding a violation, the Court considered and dismissed the contention that no violation existed because the Union did not insist upon a total cessation of business provided the subcontractees be-

came members of the Union. In so holding, the Court stated:

> "At the threshold of our inquiry is the question whether the agreement requires a cessation of business with the owner-operators and fleet-owners since by its terms it would permit them to retain the work if they became employees of the carrier and joined the union. The requirement that the owner-operators and fleet-owners must become employees of the carriers prohibits a carrier by implication from doing business with those who do not become its employees and thus requires it to 'cease doing business' within the meaning of Sec. 8(e). General Teamsters', Warehousemen and Helpers Union, Local No. 890, 137 NLRB 641, 643-44 (1962). It is no answer to say that if the subcontractors become employees and join the union the carriers will not be required to cease doing business with them. While it is true that not every incidental alteration in the relationship between the parties to the subcontract would rise to the extent of constituting an agreement to cease doing business, the provisions before us are so drastic in their impact on the continued relationship of the independent subcontractees with the carriers that they fall clearly within the area regulated by Sec. 8(e)."

We fail to see any substantial distinction between the facts of that case and the instant case. Just as the Union in the *Pyle* case would have been satisfied if the subcontractees were required to join their Union, so too the Respondent here would have been satisfied if White replaced his welding machine operators with members of Local 825. In both cases the means adopted to achieve the

end were the same, a serious disruption of the business relationship, the only distinction being that in one case it was condemned by the Third Circuit as a violation of the National Labor Relations Act and in the instant case it was not.[11]

The decision of the Third Circuit in this case, we believe, would also have an adverse impact upon the "separate gate" principles enunciated by this Court in the *General Electric* case, (*Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO* v. *National Labor Relations Board,* 366 U. S. 667 (1961). In that case the court of appeals for the District of Columbia,[12] concluded that the Board was correct in finding that the object of picketing by the Union at a gate reserved exclusively by General Electric for employees of contractors performing work unrelated to the plant's normal operations, was to encourage the independent contractor employees to engage "in a concerted refusal to perform services for their employers in order to bring pressure on General Electric." This Court agreed. Inherent in the reasoning of that decision was that picketing at such a gate could have no other purpose than to enmesh employees of neutral employers in the Union's dispute with the primary employer. So too, in most common situs cases the Board applying its *Moore Drydock*[13] standards infers a cease doing business object from the Union's conduct.

Will those decisions be clouded by the interpretation of the Third Circuit in this case? If the Third Circuit is correct, will neutral employers working at a primary site

---

[11] See also *Local 107, Teamsters* (E. A. Gallagher and Sons), *supra.*

[12] 278 F. 2d 282 (CA DC).

[13] See *Sailors Union of the Pacific, AFL* (Moore Dry Dock Co.), 92 NLRB 547 (1950).

continue to be afforded this protection, or will they be subject to "disruption" of their contractual relationship with the primary employer under the guise that the Union was not seeking to terminate the business relationship but merely putting pressure upon them so that they will exert their influence on the primary employer to comply with the Union's demands.[14] Clearly, such a retreat from recent developments in the field of labor-management relations which have enforced the rights of neutral employers protected under the Act should not be eradicated.

As is evident from the foregoing the decision of the Third Circuit so vitiates the secondary boycott provisions of the Act that its ramifications may well be more extensive than originally perceived. Should not, then, the interpretation of the National Labor Relations Board in the exercise of the expertise it has developed in over 22 years under Taft-Hartley be given substantial weight? The Board, as perhaps the Third Circuit failed to do, perceives of and interprets the Act in the context of an entire body of labor law developed over the years and within the total framework of the regulatory scheme.

As this Court stated in *Republic Aviation Corp.* v. *Labor Board,* 324 U.S. 793, 800 (1945), and in *Local 761, I.U.E., et als., supra,* "One of the purposes which lead to the creation of such Boards is to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration." To sustain the view of the Third Circuit in this case would, we submit, be an unfortunate departure from that principle.

---

[14] In this connection will the interpretation of the Third Circuit achieve for construction unions the complete "common situs" picketing freedom they have so far been unable to achieve through their perennial efforts to amend this section of the Act. For the most recent example see HR 100, S 1371; S 1365, 91st Congress.

POINT II

The Court of Appeals erred in rejecting the finding of the Board that Respondent had a cease doing business object within the meaning of the Act.

In the opinion below the court of appeals found that the record amply justified the conclusion that Burns, Chicago Bridge and Poirier were subjected to coercion in the form of strikes and strike threats and adopted these findings of the Board (A. 351). The Court experienced no difficulty with that essential element of a violation. However, it rejected the Board's ultimate finding that such conduct had a "cease doing business" object within the meaning of the Act. Here the court seriously erred. Initially, it mistakenly concludes that "It was not the Board's theory, nor does it seem seriously to be contended that the Respondents sought to compel Burns to stop using the services of White or to terminate its contract with White." (A. 351). In commenting that such theory was not "seriously" contended, the court concedes that the Board did so urge.

In fact the Board's brief to the court below states (at pages 25-27):

> "The Board properly found that the unlawful economic pressure applied by the Union to the neutrals had an object of forcing a disruption of the business relationship among the contractors at the job site, in violation of Section 8(b)(4)(i) and (ii)(B). The Union's ultimate object of securing the disputed work would be achieved by disrupting the business relationship between the neutral subcontractors and Burns and by threatening Burns

directly, for the only means whereby the neutrals could rid themselves of this economic pressure would be to substitute another subcontractor for White or to compel White to change its work assignment. Such disruption of the existing relationships between neutrals and the primary employer (White) constitutes a 'cease doing business' object within the meaning of Section 8(b)(4)(B). Indeed, in many secondary boycott situations the offending union's preferred objective is not to force a literal and total cessation of business among employers, but rather to compel the primary employer, through threats of or actual loss of business, to submit to the union's demands. Only if the primary employer refuses to yield in the face of the secondary pressures is the union's purpose aided by the removal of the primary entirely. So here—although the Union would have been satisfied if by striking against and threatening the secondaries, White had been compelled to change its work assignment—barring such a result, a literal cessation of business would be necessary. In sum, we submit that the Board properly found that the Union violated Section 8(b)(4)(i) and (ii)(B) by engaging in strikes and threatening neutrals with an object of causing a disruption of the business relationships among the various employers at the job site."

This passage from the Board's brief clearly demonstrates that the Board *did* urge that Respondent had as *an* object the total termination of the business relationship between Burns and White. At the same time it points out that total cancellation achieves Respondent's desired end as well as does submission by the primary employer.

The underlying premise induged by the court below that a cancellation of the business relationship between Burns and White "would not have been advantageous" to the Union (A. 351), is patently in error.

Even the trial examiner, who originated the theory now advanced by the court of appeals, recognized the inherent alternate objective of a total cancellation of business.[15]

With regard to this point it should be noted that in reversing the Trial Examiner and holding that a disruption of the business relationship was sufficient to establish a violation, the Board did not negate the fact that an alternate object of total cancellation of the Burns and White contract existed. Rather, it reaffirmed its past policy of finding a violation on "something less" than a total cancellation of business.

The court of appeals apparently does not appreciate the realities of the construction industry. As is well known by anyone familiar with these matters, it is not easy to bring about the actual termination of a contractual relationship on a permanent basis between a general contractor and subcontractors, particularly on a $68,000,000.00

---

[15] In his decision, the Trial Examiner states, "Local 825 never made any request upon Chicago Bridge, Poirier or White to cease doing business with Burns. Such a request," i.e. of either Chicago Bridge, Poirier or White to cease doing business with Burns, "would have been totally irrational for it would have simply forced Burns to employ such other subcontractors which, *with the possible exception of White,* would not have furthered either interests of the Respondent" (Emphasis supplied) (A. 28). Thus, it was readily apparent to the Trial Examiner as it should have been to the Circuit Court that the removal of White from the project by a termination of the contractual relationship was certainly a possibility that would have furthered the interests of Respondent.

project. While N.L.R.B. cases abound involving construction situs secondary boycott activity, few if any would disclose that contractors in the situation of White on a major project are indeed replaced. Unions, of course, know this. Indeed, they know that to be successful the pressure must be brought to bear on neutral contractors such as Chicago Bridge and Poirier with whom the Engineers were employed and, in the circumstances of this case, upon the general contractor Burns who could remove White from the job. As the Fifth Circuit observes in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, supra,* this is the classic secondary boycott coercive technique.

Thus, as stated above, while the union's preferred object may have been to force White to succumb to its demands through the coercion of those doing business on the project with White, the more remote possibility, White's total removal, was certainly not precluded. Simply stated, the Respondent wanted a massive disruption of progress at the job site until Burns or White bent to its will, and if necessary removal of White from the job.

The standard of proof expected by the circuit court to establish an unlawful object under its interpretation of the Act further compounds its error. It observed that the Union did not "admit a cease doing business object." To expect this is incredulous.

Labor relations are not a "pink tea" affair. In fact, as well put by a Trial Examiner in evaluating evidence in another secondary boycott case involving this very same Respondent, "Naivete however becoming to the young and innocent is a dispensable asset in evaluating labor disputes. It invites miscalculation". *International Union of Operating Engineers, Local 825* (United Engineers and Constructors Inc.) 138 NLRB 279, enf'd 322 F.

2d 478 (CA 3, 1963). Therefore the opinion below not only imposes an evidentiary standard virtually impossible to sustain, but it reveals a fundamental unawareness of or disregard for the sophistication with which unions now cloak unlawful objectives. Exposure to Board and Court procedures obviously teaches something.

This union in particular is no stranger to Board and Court proceedings interpreting Section 8(b)(4) of the Act. Indeed, its proclivity to violate Sections 8(b)(4)(B) and (D) of the Act is demonstrated in the following decided cases:

> I.U.O.E., Local 825 (Building Contractors Association of New Jersey), 118 NLRB 978 (1957); Local 825, I.U.O.E. (Charles Simkin & Sons, Inc.), 120 NLRB No. 111 (1958); Booth and Flinn Co., 120 NLRB No. 75 (1958); I.U.O.E., Local 825 (Fluro Electric Corp), 128 NLRB 725 (1960); I.U.O.E., Local 825 (Carleton Bros. Co.), 131 NLRB 452 (1961); I.U.O.E., Local 825 (Warren George, Inc.) (1961); I.U.O.E., Local 825 (R. G. Maupai Co.), 135 NLRB 578 (1962), enf'd 315 F. 2d 695 (C.A. 3, 1963) (involving secondary activity in order to obtain an assignment to a welding machine as in the instant matter and in which the Board made special note of Local 825's proclivity to violate the secondary boycott provisions of the Act. I.U.O.E., Local 825 (Schwerman Co. of Pa., Inc), 139 NLRB 1426 (1962); I.U.O.E., Local 825 (United Engineers and Constructors, Inc.), 138 NLRB 279 (1962), enf'd 322 F. 2d 478 (C.A. 3, 1963); I.U.O.E., Local 825 (Building Contractors Association of New Jersey), 145 NLRB 952 (1964), enf'd August 5, 1966, by consent decree in civil No. 15,928; I.U.O.E., Local 825 (Nichols Electric

Co.), 137 NLRB 1425, enf'd in part 376 F. 2d 213 (C.A. 3, 1964), adjudged in criminal contempt (C.A. 3) cert. den. 379 U.S. 934; I.U.O.E., Local 825 (Peter Weber, President and Business Manager) and Utilities Line Construction Co., Inc., 159 NLRB 131; Local 825, I.U.O.E. (American Dredging Co.), 168 NLRB No. 34 (1967), enf'd sub. nom. N.L.R.B. v. Weber, 382 F. 2d 387 (C.A. 3, 1967); Local 825, I.U.O.E. (Morin Erection Co.), 168 NLRB No. 1 (1967).

In addition, there is now outstanding a report to the Third Circuit by Special Master Albert B. Maris recommending that this Respondent be found in civil contempt in four separate instances of having violated the decrees of the Third Circuit ordering it to cease and desist from secondary boycott activity.[16]

In the instant case the Board stated (A. 9-10):

> "Having found that the Respondent has also engaged in violations of Section 8(b)(4)(B) and *because of the Respondent's demonstrated proclivity to engage in unlawful secondary activities, as noted in the Trial Examiner's Decision, we shall issue a broad cease and desist order* to prevent the Respondent from committing future violations in its disputes with White and other primary employers." (Emphasis supplied)

To expect an admission by a union, particularly the Respondent union with such a long record of violations, is incredulous.

---

[16] See *N.L.R.B.* v. *Local 825, I.U.O.E., et als.* (No. 17091) and *N.L.R.B.* v. *I.U.O.E., et als.* (No. 17092).

In assessing the opinion below we must note the court's reluctance to draw any reasonable inference from the facts and its apparent belief that a conscious intent to violate the statute is required.

The Board has long held with judicial approval that intent may be inferred from all the circumstances.[17]

In *International Typographical Union,* (New York Herald Tribune, Inc.), *supra,* at page 197-198, the Board articulated the nature of the intent proscribed by the Act. There, it said:

> "The Respondent equates 'an object' as used in Section 8(b)(4)(B) with a specific intent to accomplish the action complained of. Respondent regards intent as synonymous with the *scienter* or *mens rea* of criminal violations. This is not, however, the type of intent which the Act requires to be proved. *Rather, 'in the absence of admissions by the Union of an illegal intent, the nature of the acts performed shows the intent.'* Here, Respondent told its members who were employed by the publishers not to handle struck work from Neo-Gravure with whom it had a dispute, and informed the publishers, with whom it had no dispute, that so long as they continued their existing relationship with Neo-Gravure it would work only on its own terms. The Union cannot disavow the consequences of this action by denying that it intended the publishers to cease doing business with Neo-Gravure when its own action made it impossible for the relationship between the publishers and Neo-Gravure to contin-

---

[17] *International Longshoremen's Association, AFL-CIO, et als.,* and Board of Harbor Commissioners, Wilmington, Del., *supra, New York Mailers Union No. 6* (N. Y. Herald Tribune), *supra.*

> ue. The Respondent may have been concerned with other objects as well, such as adherence to its traditional policy of refusing to handle struck goods, *but its actions effectively establish that, at least, an object was to force the publishers to disrupt or seriously curtail the existing business relationship* between them and Neo-Gravure if the Union was unable to obtain its goal of recognition in any other fashion." (Emphasis supplied)

So it is that the Board (and in those circuits where the issue has been raised, with the present exception of the Third) when considering the conduct of a union, determines whether its acts manifest *an object* which is unlawful, whether it be an alternative object,[18] conditional object,[19] immediate object,[20] or ultimate object.[21]

Surely, the total withdrawal of its members from the project in a unified display of force and coercion on two occasions is ample evidence of the adamancy of the Union's stand and of its determination to achieve its end —assignment of the work. Unfortunately, it sought to achieve this end by illegal coercion and strikes against neutrals. It was totally insensitive to the deep injuries caused neutrals. It was without concern whether it achieved White's change of the work assignment

---

[18] *Bangor Building Trades Council, AFL-CIO* (Davidson Construction Co., Inc., 123 NLRB 484 (1959) enf'd 278 F. 2d 287 (CA 1, 1960).

[19] *Texas Industries,* 112 NLRB 923, note 2 (1955); enf'd 234 F. 2d 296 (CA 5, 1956).

[20] *Tennessee Coal and Iron Division of United States Steel,* 127 NLRB 823 (1960), enf'd as mod. 294 F. 2d 256 (CA DC 1961).

[21] *N.L.R.B.* v. *Denver Building Trades, supra.*

by a serious disruption of the project or by White's total removal from the project. Whichever its objective, or both, we submit it was a "cease doing business" object within the intendment of the Act and therefore a violation of Section 8(b)(4)(i) and (ii)(B).

In our petition we stated that this case is one of great and recurring significance in the enforcement of the National Labor Relations Act. We have attempted herein to point out some of its adverse ramifications in all industries and particularly in the construction industry. There may indeed be more which we cannot now envision.

In an industry already afflicted with exceedingly high labor costs, limitations upon the most effective utilization of manpower and equipment, costly delays due to jurisdictional, secondary and other strikes, to give judicial sanction to conduct such as that involved in this case would be a telling blow indeed.

The court below refused to find the Respondent's conduct unlawful, even though conceding it was "objectionable and deserving of condemnation" (A. 352), and stated that it is for Congress to broaden the language of Section 8 (b)(4)(i) and (ii)(B) if it desires to cover such objectionable conduct. We reply and the overwhelming weight of authority is in accord, that Congress has already done its job.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that this Court should reverse that portion of the decision of the Court of Appeals wherein it failed to find a violation of Section 8(b) (4) (i) and (ii) (B) of the National Labor Relations Act, and direct enforcement of that portion of the Board's order.

Respectfully submitted,

VINCENT J. APRUZZESE,
Counsel for Petitioners,
1180 Raymond Boulevard,
Newark, New Jersey 07102

Of Counsel:

FRANCIS A. MASTRO,
MERRITT T. VISCARDI,
APRUZZESE & MCDERMOTT.

SUPPLEMENTAL APPENDIX

Statute Involved

The relevant provisions of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq*) are as follows:

> Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> • • •
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> • • •
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the pro-

2

a

Statute I

Involved

visions of section 9: *P*

tained in this clause (B) shall be construed to make *Provided,* That nothing con-

unlawful, where not o*therwise* unlawful, any pri-

mary strike or primary picketing;

• • •

(D) forcing or requir*ing* any employer to assign particular work to emp*loyees* in a particular labor organization or in a pa*rticular* trade, craft or class rather than to employe*es* in another labor organiza-tion or in another trad*e*, craft or class, unless such employer is failing to c*onform* to an order or certi-fication of the Board *determining* the bargaining representative for empl*oyees* performing such work:

• • •

(e) It shall be an unfa*ir* labor practice for any la-bor organization and *any* employer to enter into any contract or agre*ement*, express or implied, whereby such employer *ceases* or refrains or agrees to cease or refrain fr*om* handling, using, selling, transporting or other*wise* dealing in any of the products of any other *employer*, or to cease doing business with any othe*r* person, and any contract or agreement entered *into* heretofore or hereafter containing such an agr*eement* shall be to such ex-tent unenforcible and v*oid*: • • •